

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EARNEST PEOPLES,

Plaintiff,

Case No. 04-74931

vs.

HONORABLE BERNARD A FRIEDMAN
MAGISTRATE JUDGE STEVEN D. PEPE

JO ANNE B. BARNHART,
COMMISSIONER OF SOCIAL SECURITY,

Defendant.

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REPORT AND RECOMENDATION

Earnest Peoples brought this action under 42 U.S.C. § 405(g) to challenge a final decision of the Commissioner denying his application for Supplemental Social Security Income (SSI) under Title XVI of the Social Security Act. The undersigned issued a scheduling order requiring Plaintiff to file his motion for summary judgment on or before September 6, 2005. After Plaintiff failed to file his motion for summary judgment, the undersigned issued an Order To Show Cause requiring Plaintiff to either explain this failure or file his motion on or before October 13, 2005. Plaintiff has failed to comply with this Show Cause Order.

Notwithstanding Plaintiff's failure to submit a motion for summary judgment, as ordered, nor explain any justification for this failure, the undersigned did review ALJ Regina Sobrino's decision of March 17, 2004, to determine if there were any apparent errors.

Plaintiff was 49 years of age at the time of the decision, with a 12th grade education, some junior course work and former work experience in maintenance and cleaning. He claimed disability under Title XVI as of May 21, 1997, due to foot, ankle, leg and hand impairments, dizziness,

gastrointestinal and psychological problems (R. 13 & 45). While he thought he had a heart attack or seizure in 1999 or 2000, an EKG, echocardiogram and EEG were normal (R.14). His application indicates his belief that he could take a job at Burger King, where he last worked in maintenance. His daily activities indicate an ability to do household chores with help, he drives, shops, maintains a yard including mowing a lawn and raking leaves (R.15).

ALJ Sobrino found that Plaintiff has severe degenerative joint disease of the lumbar spine, peripheral neuropathy, rotator cuff tendinopathy, depression and a personality disorder (R.17). She found that these did not meet the listing of impairments and allowed for performance of a limited range of light exertional work (*id.*). Based on vocational testimony that there were several thousand jobs available in the region, the ALJ found Plaintiff not disabled.

There is nothing apparent in the ALJ's decision that suggests an error of law or fact was made, and in the absence of a motion for summary judgment from Plaintiff, there is no basis to modify the Commissioner's decision.

Therefore, IT IS RECOMMENDED that this matter be dismissed for Plaintiff's failure to comply with this Court's Order and failure to prosecute this matter.

Dated: October 31, 2005
Ann Arbor, Michigan

s/Steven D. Pepe
United States Magistrate Judge

Certificate of Service

I hereby certify that copies of the above were served upon the parties of record by electronic means or U. S. Mail on October 31, 2005.

s/William J. Barkholz
Courtroom Deputy Clerk